IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.18357 of 2004

AND

W.P.NOS.407, 426 & 2471 of 2005

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WRIT PETITION NO: 18357 of 2004

Between:

Singam Satyanarayana, s/o.Late Sri Yadagiri, MPTC Laxmapur
& President Mandal Parishad, Shamirpet, Ranga Reddy District.

..... PETITIONER

AND

1. The Election officer & Deputy Chief Executive officer, Zilla Parishad, Ranga Reddy District.
2. The Government of Andhra Pradesh rep. by its Principal Secretary, Panchayat Raj & Rural Development Department, Secretariat, Hyderabad.
3. The State Election commission, Andhra Pradesh, Budha Bhavan, Secunderabad, rep. by its Secretary.
4. Sri Palle Seetaramulu, M.P.T.C., Aliabad, Shamirpet Mandal, Ranga Reddy District and TRS party Whip.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction declaring the proceedings No.B1/3317/2004-V2 dt.01-10-2004 issued by the Election Officer & Deputy Chief Executive Officer, Zilla Parishad, Ranga Reddy District, 1st respondent herein as illegal, arbitrary, unreasonable, null and void and violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the provisions of Andhra Pradesh Panchayat Raj Act, 1994 and the Andhra Pradesh

conduct of Election of Member (Co.opted) and President/Vice-president of Mandal Parishad And Member (Co. Opted) and President/Vice-President of Mandal parishad and Rural Member (Co.opted) and Chairman/Vice-Chairman of Zilla parishad Rules, 1994.

Counsel for the Petitioner: MR.A.V.SESHA SAI

Counsel for the Respondent Nos.1 & 2: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.3: SRI K.G.K.PRASAD

Counsel for the Respondent No.4: MR.V.RAJAGOPAL REDDY

WRIT PETITION NO: 407 of 2005

Between:

Palle Sitaramulu Goud, S/o. Sri Satte Goud, Hindu, R/o.Aliabad Village, Shamirpet mandal, Ranga Reddy District.

..... PETITIONER

AND

1. State of Andhra Pradesh, Rep. by Principal Secretary to Government, Panchayat Raj and Rural Development (MDL II-A) Department, Secretariat Buildings, Hyderabad.
2. The Election Officer & Deputy Chief Executive Officer, Zilla Parishad, Ranga Reddy District.
3. Singam Satyanarayana, S/o. Late Sri Yadagiri, Hindu, MPTC Member of Zilla Parishad, Laxmpaur, Ranga Reddy District.
4. Smt. G.Alivelu, W/o. Sri Satyanarayana, Hindu, R/o Lalgudi, Malakpet village, Shamirpet Mandal, Ranga Reddy District.
5. Sri D.Veeraswamy, S/o. D.Sattaiah, Hindu, R/o.Jaganguda Village, Shamirpet Mandal, Ranga Reddy District.
6. V.Krishna Murthy, S/o.Shamkaraiah, Hindu, R/o.Uddemarry Village, Shamirpet Mandal, Ranga Reddy District.
7. T. Babu, S/o. T.Ramaswamy, Hindu, R/o.Bommarasipet Village, Shamirpet Mandal, Ranga Reddy District.
8. Sri T. Ramu, MPTC Member, R/o.Pothayapalli Village, Shamirpet Mandal, Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of a writ of mandamus declaring that the respondents 3 to 8 have become disqualified to continue as Members of MPTCs from their respective villages as per Article 243F(1) (a) read with Article 191(2) and paragraph 2 of Tenth Schedule to the Constitution of

India as well as Section 153(1) of A.P. Panchayat Raj Act, 1994 and the No-Confidence Motion moved and carried on by them on 03-08-2004 was illegal, null and void with a consequential direction that the petitioner herein continues to be the President of Mandal Praja Parishad, Shamirpet Mandal, R. R. District and pass.

Counsel for the Petitioner: MR.V.RAJAGOPAL REDDY

Counsel for the Respondent No.3: MR.P.RAJAGOPALA RAO

Counsel for the Respondent Nos.1 & 2: GP FOR PANCHAYAT RAJ & RURAL DEV.

WRIT PETITION NO: 426 of 2005

Between:

Palli Sitaramulu Goud, S/o. Sri Satte Goud, Hindu, R/o.Aliabad Village, Shamirpet Mandal, Ranga Reddy District.

..... PETITIONER

AND

1. State of Andhra Pradesh, rep. by Principal Secretary to Government, Panchayat Raj and Rural Development (MDL II-A) Dept., Secretariat Buildings, Hyderabad.
2. The District Collector, Ranga Reddy District.
3. The Election Officer & Deputy Chief Executive Officer, Zilla Parishad, Ranga Reddy District.
4. The Secretary to Election Commissioner, Budha Bhavan, Secunderabad.
5. Singam Satyanarayana, S/o. late Sri Yadagiri, Hindu, MPTC, Member of Zilla Parishad, Laxmapur, Ranga Reddy District.
6. Smt. G.Alivelu, W/o. Sri Satyanarayana, Hindu, R/o.Lalgudi, Malakpet Village, Shamirpet Mandal, R.R. District.
7. D.Veeraswamy, S/o. D. Sattaiah, Hindu, R/o. Jaganguda Village, Shamirpet Mandal, Ranga Reddy District.
8. V.Krishna Murthy, S/o. Shankaraiah, Hindu, R/o.Uddemarry Village, Shamipet Mandal, Ranga Reddy District.
9. T.Babu, S/o. T. Ramaswamy, Hindu, R/o.Bommrasipet Village, Shamirpet Mandal, Ranga Reddy District.

(Respondents 6 to 9 are MPTC members of Z.P.Ranga Reddy District).

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of a writ of Certiorari calling for records and quash the impugned order of the 1st respondent in

Memo No. 10512/Mdl.II-A/2004-9 dt.27-12-2004.

Counsel for the Petitioner: MR.V.RAJAGOPAL REDDY

Counsel for the Respondent No.5: MR.P.RAJAGOPALA RAO

Counsel for the Respondent Nos.1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.4: Sri T.V.S.Prabhakar

WRIT PETITION NO: 2471 of 2005

Between:

Palle Sitaramulu Goud, s/o Sri Satte Goud, Hindu, R/o.Aliabad Village, Shamirpet Mandal, Ranga Reddy District.

..... PETITIONER

AND

1. State of Andhra Pradesh, Rep. by Principal Secretary to Government, Panchayat Raj and Rural Development (MDL II-A) Dept., Secretariat Buildings, Hyderabad.
2. The Election Officer & Deputy Chief Executive Officer, Zilla Parishad, Ranga Reddy District.
3. Singam Satyanarayana, s/o Late Sri Yadagiri, Hindu, Ranga Reddy District.
4. Smt. G.Alivelu, W/o Sri Satyanarayana, Hindu, R/o.Lalgudi, Malakpet Village, Shamirpet Mandal, Ranga Reddy District.
5. Sri D. Veeraswamy, S/o Sattaiah, Hindu, R/o.Jaganguda Village, Shamirpet Mandal, Ranga Reddy District.
6. V.Krishna Murthy, S/o Shankaraiah, Hindu, R/o.Uddemary Village, Shamirpet Mandal, Ranga Reddy District.
7. T. Babu, S/o T. Ramaswamy, Hindu, R/o.Bommarasipet Village, Shamirpet Mandal, Ranga Reddy District.
8. Sri T.Ramu, S/o T. Ramaswamy, Hindu, Pothayapalli Village, Shamirpet Mandal, Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of a writ of certiorari calling for the records in G.O.Ms.No.228, Panchayat Raj and Rural Development (MDL.II) (A) Department, dt.19-8-2004 removing the petitioner herein from the office of the President, Mandal Praja Parishad, Shamirpet Mandal, Ranga Reddy District, as illegal, unconstitutional, arbitrary and null and void and quash the same.

Counsel for the Petitioner: MR.V.RAJAGOPAL REDDY

Counsel for the Respondent No.3: MR.P.RAJAGOPALA RAO

Counsel for the Respondent Nos.1 & 2: GP FOR PANCHAYAT RAJ & RURAL DEV. And Smt Jyothieshwar Gogineni.

The Court made the following:

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THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO.18357 OF 2004

AND

W.P.NOS.407, 426 & 2471 OF 2005

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COMMON ORDER:

Since all these petitions are interconnected, they are being disposed of by a common order.

2. For the sake of convenience, I would refer to the parties as they are arrayed in W.P.No.2471 of 2005.

3. Palle Sitaramulu Goud (petitioner), Singam Satyanarayana, (third respondent) who is the petitioner in W.P.No.18357 of 2004, Smt.G.Alivelu, D.Veeraswamy, V.Krishna Murthy, T.Babu and T.Ramu (respondents 4 to 8) and others were elected as Members of Mandal Parishad Territorial Constituencies (MPTCs) of Shameerpet Mandal held on 03.07.2001. Petitioner and respondents 3 to 8 were elected on Telangana Rashtra Samithi (TRS) party ticket. Thereafter petitioner was elected as the President of the Mandal Parishad, Shameerpet Mandal. On the basis of a requisition dated 15-07-2004 given by eleven MPTCs seeking to move a 'No Confidence Motion' against the petitioner, a special meeting for considering the 'No Confidence Motion' against him was convened by the Deputy Chief Executive Officer, Zilla Parishad, Rangareddy District (2nd respondent), on 03-08-2004 and during that meeting, motion of no confidence was passed against him and consequently G.O.Ms.No.228 Panchayat Raj And Rural Development [MDL.II (A)] Department dated 19-08-2004 removing the petitioner from the office of the

President, Mandal Parishad, Shameerpet, was issued by the Government. Thereafter a meeting, for election of the vacant post of the Mandal President, Shameerpet, Rangareddy District, was convened on 21-09-2004 whereat petitioner and third respondent contested. Petitioner, who was appointed as the 'Whip' of TRS party, issued a 'whip' to the MPTCs of TRS party to vote in his favour. But, in that meeting since petitioner polled 4 votes only, third respondent was declared elected as the President of the Mandal Parishad. Alleging that respondents 3 to 8 in defiance of his whip had cast their votes in favour of third respondent, petitioner filed a petition before the second respondent to take action against them under the A.P. Panchayat Raj (Conduct of Election of Members (co-opted) and President/Vice President of Mandal Parishads and members
(co-opted) and Chairman/Vice Chairman of Zilla Parishads) Rules, 1994 (hereinafter referred to as the Rules) whereupon second respondent issued show cause notices dated 23-09-2004 to respondents 3 to 8 and after receiving their explanation, passed orders dated 01-10-2004 in his proceedings No.B1/3317/2004-V2 holding that respondents 3 to 8 have incurred disqualification under Section 153 and 181 of the Panchayat Raj Act, 1994 (the Act) and declared that they ceased to be the MPTCs of Shameerpet Mandal. Questioning the said order, third respondent filed W.P.No.18357 of 2004. G.Alivelu, D.Veeraswamy, V.Krishna Murthy and T.Babu i.e. respondents 4 to 7 filed a revision (review) petition before the Government questioning the said order, whereupon government passed an order dated 16-10-2004 staying the proceedings dated 01-10-2004 issued by the second respondent. Questioning the said order dated 16-10-2004 of the government, petitioner filed W.P.No.20924 of 2004 which was dismissed on 16-11-2004 by a learned single Judge of this Court, holding that he can approach the Government by filing an appropriate application for vacating the proceedings impugned in the revision and with a direction to the Government to consider and dispose of such an application, if filed, after hearing all the parties. Thereafter petitioner filed W.P.No.407 of 2005 for a declaration that respondents 3 to 8, who were elected on TRS party ticket, since are claiming that they had resigned from the TRS party and joined some other political party, had incurred disqualification as per Article 243F(1)(a) read with Article 191(2) and para-2 of Tenth Schedule to the Constitution of India and Section 153(1) of the Act. While things stood thus, Government allowed the Revision filed by respondents 4 to 7 and issued Memo No.10512/Mdl.II-A/2004-9 dated 27-12-2004 setting aside the proceedings of the 2nd respondent dated 01-10-2004 disqualifying respondents

3 to 7 as MPTCs. Alleging that Government has no power to entertain a revision (review) against an order passed by second respondent (Election Officer) and in any event since that order was passed without affording an opportunity of being heard to him, petitioner filed W.P.No.426 of 2005 to set aside the Memo No.10512/Mdl.II(A)/2004-9 dated 27-12-2004 of the Government, and later filed W.P.No.2471 of 2005 to set aside G.O.Ms.No.228, Panchayat Raj and Rural Development (Mdl.II) (A) Department, Dt.19-08-2004 issued by the Government removing him from the office of the President, Mandal Parishad, Shameerpet.

4. The main contention of the learned counsel for the petitioner is that since respondents 3 to 8 admittedly were elected as MPTCs on TRS party ticket and since they claim that they had tendered resignation to TRS party and joined some other political parties, they ceased to be MPTCs in view of Article 243F(1)(a) read with Article 191(2) and para-2 of Tenth Schedule to the Constitution of India by placing strong reliance on **C.R.SARASWATAMMA v. PRESIDING OFFICER-CUM-ELECTION OFFICER/NODAL OFFICER** in support of his said contention. It is also his contention that even assuming that they are not so disqualified, since they were elected on TRS party tickets and since the 'Whip' to vote in favour of the petitioner, admittedly, was disobeyed by them, they cease to be the MPTCs in view of Rule 13 of the Rules inasmuch as the procedure prescribed by the Rules for issuing the whip was followed by the petitioner.

5. The contention of the learned counsel for third respondent is that since the third respondent left the TRS party as long back as on 08-10-2003 and joined Telugu Desam Party on 20-11-2003 and since the 'Whip' allegedly issued by the petitioner was not served on the third respondent, and in any event since the procedure prescribed by Rule 13 of the Rules read with Circular No.853/SEC-B1/2001-3 dated 19-07-2001 was not followed, neither third respondent nor respondents 4 to 8 can be said to have incurred a disqualification for their alleged disobeyance of the 'Whip' issued by the petitioner. He placed strong reliance on **PANDRANKI PARVATHI AND OTHERS v. AKULA GANGARAJU** in support of the said contention that the procedure prescribed by the Rules relating to issuance of the 'whip' is mandatory.

His next contention is that since TRS party got recognition from the Election Commission of India only on 21-05-2004, and since it (TRS party) was not a 'recognized' political party by the date of elections which took place in 2001 and since third respondent joined Telugu Desam Party long before TRS party was recognized by the Election Commission of India, question of third respondent or respondents 4 to 8 incurring disqualification for their resigning from TRS party does not arise because Rule 13 of the Rules applies only to 'recognized' political parties.

6. In reply, the contention of the learned counsel for the petitioner is that 'recognition' of a political party by the Election Commission of India has no relevance for the purpose of Article 243F(1)(a) of the Constitution read with para-2 of its Tenth Schedule. Relying on **JANATA DAL (SAMAJWADI) v. ELECTION COMMISSION OF INDIA** and **Ms.KRISHNA MOHINI v. MOHINDER NATH SOFAT** he contended that 'recognition' of a political party under the Representation of the People Act, 1951, is relevant for the elections to Legislature and Parliament only as per Election Symbols (Reservation and Allotment) Order, 1968 (for short '1968 Order'). Since Election Commission of India admittedly registered TRS party as a 'political party' under Section 29-A of the Representation of the People Act, 1951, with effect from 21-03-2001, TRS party is but a 'political party' even by the date of election of petitioner and respondents 3 to 8, for the purpose of Tenth Schedule to the Constitution of India.

7. Copy of the communication No.56/117/2001-J.S.III/2714 of the Election Commission of India dated 21-08-2001 is produced by the petitioner. The genuineness of the same is not disputed by any of the respondents. It reads-

"To

Sri K. Chandrasekhara Rao,

President,

Telangana Rashtra Samithi,

House No.8-2-220/110/1/3,

Road No.14, Banjara Hills,

Hyderabad, Andhra Pradesh.

Subject:- “Telangana Rashtra Samithi”

Registration under Section 29A of the Representation of the People Act, 1951, as a political party – matters regarding.

Sir,

I am directed to state that the Election Commission of India, after having considered your application, dated 12.06.2001 for registration of “Telangana Rashtra Samithi” as a political party and the documents produced in support of the statements/averments made/contained in the said application and the submission made by Shri R.Santhanakrishnan of the party before the Commission on 21.08.2001 in respect of the said application, has registered the said “Telangana Rashtra Samithi” as a political party under Section 29A of the Representation of the People Act, 1951 on and with effect from 21.03.2001.

2. As provided in sub-section (9) of 29A of the Representation of the People Act, 1951, the party shall communicate to the Commission without delay and change in its name, head office, office-bearers, address or in any other material matters.

3. It may be noted that the registration will not entitle the party to the reservation of any exclusive symbol for it. However, the candidates duly set up by the party at an election will be entitled to benefits of preference over independent candidates under paragraph 12 of the Election Symbols (Reservation and Allotment) Order, 1968.

Yours faithfully,

Sd/-xxx

(K.J.RAO)

SECRETARY”

8. Copy of the communication No.56/Review/2004-J.S.III/ 2099 dated 21-05-2004 of the Secretariat of the Election Commission of India, produced by the petitioner, not disputed by the respondents, reads-

“To

Sri K. Chandrasekhara Rao,

President,

Telangana Rashtra Samithi,

House No.8-2-220/110/1/3,

Road No.14, Banjara Hills,

Hyderabad, Andhra Pradesh.

Subject:- Recognition of Telangana Rashtra Samithi as a State Party in the State of Andhra Pradesh – Regarding.

Sir,

I am directed to refer to your letter dated 17.05.2004 on the subject cited and to state that the Commission has recognized "Telangana Rashtra Samithi" as a State Party in the State of Andhra Pradesh on the basis of its poll performance in the general election to the Legislative Assembly of Andhra Pradesh held in 2004, under the provisions of the Election Symbols (Reservation & Allotment) Order, 1968.

2. You may intimate your preference of the symbol to be allotted as the reserved symbol of the party in Andhra Pradesh. You may indicate three symbols in the order of preference and also submit design/drawing of the symbols, at the earliest.

Yours faithfully.

Sd/-xxx

(K.F.WILFRED)

SECRETARY"

9. Since the main contention of the petitioner is that respondents ceased to be MPTCs for their voluntary giving up of their membership to TRS party, after having been elected as MPTCs on the basis of TRS party ticket, and since the fact that respondents 3 to 8 were elected as MPTCs on TRS party ticket is not disputed, I feel it relevant to extract some of the relevant provisions, which are necessary for disposal of these petitions. Section 29A(1) of the Representation of the People Act, 1951 reads:

"Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act."

Para-2(1)(h) of the Election Symbols (Reservation & Allotment) Order, 1968, defines 'Political Party' as –

"an association or body of individual citizens of India registered with the Commission as a political party under Section 29-A of the Representation of the People Act, 1951."

Sub-para-1 of Para-2 of the Tenth Schedule to the Constitution reads:

"Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—

a. if he has voluntarily given up his membership of such political party; or

b. if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority, and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention."

Paragraph 3 of the Tenth Schedule of the Constitution reads:

"**Disqualification on ground of defection not to apply in case of split**. Where a member of a House makes a claim that he and any other members of his Legislature party constitute the group representing a faction which has arisen as a result of the split in his original political party and such group consists of not less than one-third of the members of such Legislature party. –

a. he shall not be disqualified under sub-paragraph (1) of paragraph-2 on the ground--

i. that he has voluntarily given up his membership of his original political party; or

ii. that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorized by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph."

Since paragraphs 4 and 5 of the Tenth Schedule relate to Speaker or Deputy Speaker, etc., it is not necessary to extract those paragraphs.

10. From para-2(1) of the Tenth Schedule to the Constitution, it is seen that 'disqualification' of a person who got elected to a post, on the basis of a ticket obtained from a 'political party', can be on two grounds i.e. (i) his voluntarily giving up his membership to that party and (ii) by his disobeying the 'whip' of the party on whose ticket he got elected. Para-2 of the Tenth Schedule to the Constitution does

not state that it applies only to a 'recognized' political party. It refers only to a 'political party'. Therefore, reading 'recognized' before 'political party' into para-2 of the Tenth Schedule to the Constitution, would amount to tinkering with the Constitution. Since it is well known that it is not permissible to add or substract words, while interpreting a statute, especially the constitution, and since the presumption is that Legislature does not waste words while making an enactment, and since there is nothing in para-2 of the Tenth Schedule to Constitution to show that that provision applies only to a 'recognized' political party,

I am unable to agree with the contention of the learned counsel for third respondent that para-2 of the Tenth Schedule to the Constitution applies only to 'recognized' political parties but not to all the 'political parties'. I would further elaborate this in the foregoing paragraphs.

11. 'Panchayat' is defined in Article 243(d) of the Constitution as

> "an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas."

Article 243B of the Constitution reads:

> "(1) There shall be constituted in every State Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.
>
> (2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs."

Therefore, it is clear that 'Mandal Parishads' are 'Panchayats' within the meaning of Article 243F of the Constitution, which reads:

> "(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat –
>
> (a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:
>
> Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

c. if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide."

Since the Rules made by the government, by virtue of the power vested in it by the Act, contain provisions relating to the consequences that ensue for disobedience of a 'whip', by virtue of Article 243F (1)(c) the Rules governing the disqualification that would ensue due to disobedience of the whip, envisaged by para-2(1)(b) of the Tenth Schedule to the Constitution.

12. As stated earlier, that respondents 3 to 8 were elected on TRS party tickets is an admitted fact. In fact, petitioner in para-7 of his affidavit filed in support of the W.P.No.407 of 2005, alleged

"I respectfully submit that the respondents 4 to 8 have also stated in their explanations to the show cause notices that they had resigned from the TRS and joined in T.D.P. and Indian National Congress parties. Thus, it is admitted by respondents 4 to 8 that they have defected from one political party to another political party." (respondents 4 to 8 are G.Alivelu, D.Veeraswamy, V.Krishna Murthy, T.Babu and T.Ramu)

Third respondent clearly admitted that he had submitted his resignation to TRS party and had joined Telugu Desam Party. Allegations apart, petitioner filed copies of documents to show that respondents 3 to 8 became members of political parties, other than TRS party after their being elected as MPTCs in 2001. Those documents are not disputed by respondents 3 to 8. In view thereof, it is clear that respondents 3 to 8, who were elected on TRS party tickets as MPTCs had, subsequent to their election, had voluntarily given up their membership to that political party and joined some other political party. Therefore, they clearly incurred disqualification as per para-2 of the Tenth Schedule read with Article 243F of the Constitution of India. In para-14 of **C.R.SARASWATAMMA** case (1 supra) relied on by the learned counsel for the petitioner, where a similar question arose, the learned Judge held –

"A member of Legislative Assembly incurs disqualification for being a member, (i) when he voluntarily gives up his membership of political party and ii) if such member votes or abstains from voting contrary to any direction (whip) issued by the political party to which he belongs. There cannot be any doubt that as per Article 243F(1)(a) of

the Constitution of India read with Article 191(2) and Paragraph 2 of Tenth Schedule to the Constitution of India as well as Section 153(1) of the Act, an MPTC member, who voluntarily gives up his membership of the political party after getting elected as a nominee of such political party shall have to be disqualified for being a member of MPTC. **It cannot be ignored that "the law for the time being in force" as mentioned in Article 243F(1)(a) of the Constitution of India and as a necessary corollary Article 191(2) and Tenth Schedule of the Constitution of India. These constitutional provisions have to be read into Article 243F(1)(a) of the Constitution of India** and therefore the petitioner, who got elected as a nominee of the TDP lost the right to be MPTC member, the moment she resigns from TDP and joins INC. **Though the provisions of the Act especially Section 153(1) of the Act and Rules 11 to 14 of the Rules do not specifically prohibit an MPTC member elected on one party ticket to resign and join another party, having regard to Article 243F(1)(a) of the Constitution of India, it has to be held that an MPTC member elected as a nominee of TDP would incur disqualification, the moment such a member joins INC and contests the election as a nominee of INC for the purpose of President**." (emphasis supplied)

13. The contention of the learned counsel for third respondent that the ratio in the above decision does not apply to the facts of this case because TRS party was not a 'recognized' political party by the date of election of respondents 3 to 8 cannot be accepted for the reasons mentioned above and since TRS party in fact was registered as a 'political party' with the Election Commission of India on 21-08-2001, and since the communication of the Election Commission of India addressed to the President, TRS party, extracted in para-7 above clearly states that the candidates duly set up that party at an election would be entitled to the benefit of preference (of the symbol) over independent candidates under paragraph 12 of the 1968 Order, it is clear that respondents 3 to 8 who were elected on TRS party tickets, which was registered with the Election Commission of India as a 'political party' by the date of their election, had voluntarily given up their membership to that party, and had joined other parties. Therefore, they would automatically incur disqualification for holding that post by virtue of paragraph 2(1)(a) of the Tenth Schedule read with Article 243F of the Constitution, irrespective of the fact that TRS party was not a 'recognized' political party by the Election Commission of India by the date of their election.

14. Since I held that respondents 3 to 8 incurred disqualification for their voluntarily giving up their membership of TRS party on whose ticket they were elected, I feel it is unnecessary to go into the other contentions raised by the learned counsel relating to the form of Whip, its service and its communication to the election officer, etc., and also the question whether Government has power to entertain a revision or

review in respect of an order passed by the 2nd respondent under the Rules.

15. W.P.No.2471 of 2005 is filed to quash the G.O.Ms.No.228, Panchayat Raj and Rural Development (MDL.II) (A) Department, dated 19-08-2004, notifying the removal of the petitioner from the office of the President of Mandal Parishad, Shameerpet Mandal, in pursuance of the 'No Confidence Motion' passed against him. Notice of the motion to move 'No confidence' is said to have been given to the 2nd respondent by 12 MPTCs including respondents

3 to 8 on 15.07.2004. In pursuance thereof, 2nd respondent convened a meeting on 03-08-2004 at 11.00 A.M. Since the respondents 3 to 8, by 03-08-2004, ceased to be MPTCs for reason of their voluntarily giving up the membership of TRS party, question of validity of the notice of motion to move a resolution of 'No confidence' and question whether the number of members present at that meeting would satisfy the requirements of Rules 2 & 11 of the Rules have to be considered. Without considering those aspects question of removing the petitioner from the Office of the President of Mandal Parishad does not arise. Since those factors were not taken into consideration before issuing the G.O.Ms.No.228, Panchayat Raj and Rural Development (Mdl.II) (A) Department, dated 19-08-2004 impugned in W.P.No.2471 of 2005 is liable to be and hence is set aside.

16. Since Government admittedly did not give notice of hearing of the Revision (Review) petition filed by respondents 4 to 7 to the petitioner, before it thought it fit to dispose of the same when such notice to the other side i.e. petitioner is mandatory, memo of the Government allowing the revision of respondents 4 to 7 impugned in W.P.No.426 of 2005 is liable to be set aside.

17. In fact by virtue of the Memo impugned in W.P.No.426 of 2005 W.P.No.18357 of 2004 filed by the third respondent can be said to have become infructuous.

18. In the result, the W.P.Nos.407, 426 and 2471 of 2005 are allowed holding that respondents 3 to 8 (in W.P.No.2471 of 2005) ceased to be the MPTCs of Shameerpet Mandal, Rangareddy District and W.P.No.18357 of 2004 is dismissed.

Parties are directed to bear their own costs.

(C.Y.Somayajulu, J.)

Date: 07-07-2005

Cvrk

Note: L.R.Copy to be marked

//B.O.//

cvrk

..... REGISTRAR

One Fair Copy to the Hon'ble Mr Justice C.Y.Somayajulu (For His Lordships kind perusal)

To

1. The Principal Secretary to Government, Panchayat Raj and Rural Development (MDL II-A) Dept., Secretariat Buildings, State of Andhra Pradesh, Hyderabad.
2. The District Collector, Ranga Reddy District.
3. The Election Officer & Deputy Chief Executive Officer, Zilla Parishad, Ranga Reddy District.
4. The Secretary to State Election Commission, Budha Bhavan, Secunderabad.

5. 8 LR Copies.

6. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New delhi.

7. The secretary, A.P.Advocates Association Library, High Court Buildings, Hyderabad.

8. Two CCs to G.P. for Panchayat Raj & Rural Development, High Court Buildings, Hyderabad (OUT).

9. CD copies.

10. CC to MR.RAJAGOPAL RAO